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* **HIGH COURT OF DELHI : NEW DELHI**

\+ **CEAC No.16 of 2007**

% Judgment delivered on: October 05, 2007

Everfine Plastic Industries P. Ltd.
Regd. Office I-1, DSIDC Complex
Rohtak Road, Nagloi
New Delhi-110 041. ..... Petitioner

Through Mr. P.C. Jain, Advocate.

versus

1. Commissioner of Central Excise
Delhi-1
Central Revenue Building
I.P. Estate, New Delhi-110 002.

2. Customs, Excise & Service Tax
Appellate Tribunal
West Block No.2
R.K. Puram, New Delhi-110066.
Through its Registrar. ..... Respondents

Through None

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

Signature Not Verified
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

The Assessee is aggrieved by an order dated 9th January, 2007 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal), Principal Bench, New Delhi in Excise Appeal No. 1447 of 2005-NB(SM).

2. The Assessee is a small manufacturer of mould/dies and used to do some trial job work on behalf of its customers.

3. The Appellate Tribunal found, on a perusal of the evidence placed before it, that the Assessee was liable to pay excise duty on the job work charges.

4. The excise authorities invoked Section 11A of the Central Excise Act, 1944 (the Act) to extend the period of limitation and levy duty on

the Assessee. The authorities below came to the conclusion, which is a finding of fact, that the Assessee was carrying on job work and, therefore, was liable to pay excise duty in respect of these job work charges. We are not persuaded to set aside this finding as it is.

5. The Tribunal has, however, found that penalty was not leviable under Section 11AC of the Act because it was a case where the Assessee was regularly issuing invoices in respect of these charges and the statutory record also reflected the mould trial charges.

6. Learned counsel for the Assessee submits that since the Tribunal has found in favour of the Assessee in regard to penalty under Section 11AC of the Act, the extended period of limitation under Section 11A of the Act should not have been invoked since the wording of these two sections is almost identical.

7. Learned counsel relied upon a decision in ***Commissioner of C.Ex. Delhi-IV Vs. ILPEA Paramount Pvt. Ltd., 2007(213) E.L.T. 500 (Tri. - LB)*** to contend that where the extended period of limitation has

been invoked, penalty under Section 11AC of the Act would automatically follow. We are of the opinion that the converse does not hold true. On the contrary, this contention if accepted would be counter productive inasmuch as the penalty imposed on the Appellant has been set aside. The fact that penalty has not been imposed does not automatically lead to an inference that the extended period of limitation would also not apply, nor does the cited decision say so.

8. Learned counsel for the Assessee has also drawn our attention to ***Jaiprakash Industries Ltd. Vs. Commissioner of C.Ex., Chandigarh, 2002 (146) E.L.T. 481 (S.C.)*** to contend that if there is a bonafide case made out by the Assessee, the extended period of limitation under Section 11A of the Act would not be applicable. This decision does not help learned counsel inasmuch as all the authorities have concurrently come to the conclusion that the Assessee was not able to make out a case of bonafides and, therefore, the extended period of limitation should be invoked in this case. No substantial question of law arises

for our opinion.

9. The appeal is accordingly dismissed.

CMs. 13668/2007 & 13669/2007

10. Since we have dismissed the appeal, the applications are also dismissed.

MADAN B. LOKUR, J

October 05, 2007 **S. MURALIDHAR, J**

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